

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

THIS DOCUMENT RELATES TO:

State of California, ex rel. Ven-A-Care v.

Abbott Laboratories, Inc., et al.

Case No: 03-cv-11226-PBS

) **MDL No. 1456**
) **Master File No. 01-12257-PBS**
) **Subcategory Case No. 06-11337**
)
) **Judge Patti B. Saris**
)
) **Magistrate Judge**
) **Marianne B. Bowler**
)
)

**MEMORANDUM IN SUPPORT OF JOINT MOTION TO SET REVISED BRIEFING
SCHEDULE FOR MOTIONS FOR SUMMARY JUDGMENT AND AMEND CMO 31**

On March 3, 2009, this Court signed an Amendment to Case Management Order No. 31 (“Amendment”), setting forth, in relevant part, the briefing schedule for motions for summary judgment in this case. That Amendment provides a deadline to file motions for summary judgment of October 30, 2009. As that deadline approaches, it has become clear, despite the best efforts of both Plaintiffs State of California and relator Ven-A-Care of the Florida Keys (“Plaintiffs”) and Defendants Dey, Inc., Dey, L.P., Mylan Pharmaceuticals Inc., Mylan Inc., and Sandoz Inc. (“Remaining Defendants”), the parties will not be able to complete their summary judgment briefing by the deadline set forth in the Amendment.¹ Accordingly, Plaintiffs and Remaining Defendants jointly request that the Court set a revised briefing schedule for motions for summary judgment, extending the current dates by three weeks. A proposed order is attached as exhibit 1.

¹ . Plaintiffs have dismissed, settled or reached tentative settlements through mediation with all other Defendants originally named in this action.

I. Background on Post-Discovery

Earlier this year, when the parties conferred and agreed upon a briefing schedule for their motions for summary judgment, they optimistically set aside 30 days from the conclusion of expert witness depositions to complete their motions.

All fact discovery was concluded on June 15, 2009. On June 30, 2009, Plaintiffs produced their expert reports. One month later, on July 30, 2009, Remaining Defendants produced their expert reports. In total, the parties designated nine expert witnesses. All experts were deposed within 60 days and by the deadline of September 30, 2009.

Thereafter, within 30 days, the parties were to complete their motions for summary judgment by October 30, 2009. Even with requests for expedited deposition transcripts and good faith efforts to complete the motions, the voluminous record alone has made it all but impossible to complete the motions within the thirty day time period.

In addition, there are two discovery motions filed by Remaining Defendants still pending (Motion for Order Granting Leave to Take Deposition Out of Time, filed 8/21/09, Master Docket No. 6394 and Motion to Determine the Sufficiency of California's Responses to Sandoz Inc.'s First Set of Requests for Admissions, filed 8/21/09, Master Docket No. 6392). Remaining Defendants wish to have these motions adjudicated, and to conduct the requested discovery if they receive a favorable ruling, before summary judgment briefing.

Plaintiffs and Remaining Defendants have made significant progress during the post-discovery stage in this action. Nonetheless, they believe they cannot complete their motions for summary judgment within the existing briefing schedule.

II. Proposed Revised Briefing Schedule

Plaintiffs and Remaining Defendants have conferred about revising the briefing schedule for motions for summary judgment. The parties jointly propose the following schedule:

November 25, 2009:	Deadline to File Motions for Summary Judgment
December 21, 2009:	Deadline to File Responses to Motions for Summary Judgment
January 15, 2010:	Deadline to File Replies to Responses to Motions for Summary Judgment
January 29, 2010:	Deadline to File Surreplies to Replies to Responses to Motions for Summary Judgment

A hearing date for the motions shall be determined by the Court.

CONCLUSION

For the foregoing reasons, the parties jointly request that the Court set a revised briefing schedule for motions for summary judgment, extending the current dates as described above and depicted in the attached proposed order.

Dated: October 16, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on October 16, 2009, a copy to Lexis-Nexis for posting and notification to all parties.

/s/ Nicholas N. Paul
NICHOLAS N. PAUL